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Attorneys for Plaintiff,  
U.S. SMALL BUSINESS ADMINISTRATION,  
as Receiver for PROSPERO VENTURES, L.P.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

U.S. SMALL BUSINESS  
ADMINISTRATION, as Receiver for  
PROSPERO VENTURES, L.P.,

Plaintiff,

v.

DONALD K. EMERY,

Defendant.

NO. C 07-03741 VRW

**Related Cases:**

C 07-03732, C 07-03733, C 07-03735,  
C 07-03736, C 07-03737, C 07-03738,  
C 07-03739, C 07-03740

**NOTICE OF MOTION TO STRIKE  
AFFIRMATIVE DEFENSES  
(FRCP 12(f)); ALTERNATIVELY,  
MOTION FOR JUDGMENT ON THE  
PLEADINGS (FRCP 12(c))**

**[Filed concurrently with Memorandum  
of Points and Authorities; and  
Proposed Order]**

Date: May 8, 2008  
Time: 2:30 p.m.  
Ct rm: 6, 17<sup>th</sup> Floor

Date Complaint Filed: July 19, 2007  
Trial Date: Not yet set

TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR RESPECTIVE  
ATTORNEYS OF RECORD:

1 Please take notice that on May 8, 2008, at 2:30 p.m., in Court Room 6, Floor 17 of the above-  
2 entitled court located at 450 Golden Gate Avenue, San Francisco, California 94102, or as soon  
3 thereafter as the matter may be heard, Plaintiff, U.S. SMALL BUSINESS ADMINISTRATION, as  
4 Receiver for PROSPERO VENTURES, L.P. ("PROSPERO") will move this Court for an order  
5 striking the affirmative defenses submitted by Donald K. Emery ("EMERY"). This motion is  
6 brought pursuant to Federal Rule of Civil Procedure 12(f). Alternatively, Plaintiff seeks entry of an  
7 Order granting Plaintiff judgment on the pleadings. This motion is brought pursuant to Federal Rule  
8 of Civil Procedure 12(c).

9 This motion will be based upon this notice, the accompanying Memorandum of Points and  
10 Authorities, the evidence submitted in support of the motion, the Request to Take Judicial Notice,  
11 and any evidence and argument which may be presented at the hearing on this matter.

12  
13 Dated: April 3, 2008

Respectfully submitted,

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15 COLEMAN & HOROWITT, LLP

16  
17  
18 By: 

19 CHRISTINE J. LEVIN  
20 Attorneys for Plaintiff,  
21 U.S. SMALL BUSINESS  
22 ADMINISTRATION, as Receiver  
23 for PROSPERO VENTURES, L.P.  
24  
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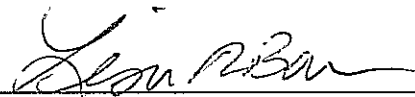
### PROOF OF SERVICE

I declare that I am a citizen of the United States of America and a resident of the County of Fresno. I am over the age of eighteen (18) years and not a party to the within action. My business address is 499 West Shaw, Suite 116, Fresno, California 93704.

On April 3, 2008, I served the foregoing document(s) described as **NOTICE OF MOTION TO STRIKE AFFIRMATIVE DEFENSES (FRCP 12(f)); ALTERNATIVELY, MOTION FOR JUDGMENT ON THE PLEADINGS (FRCP 12(c))** on the interested parties, addressed as stated on the attached service list.

- ☒ BY MAIL - by placing ☒ a true and correct copy ☐ the original thereof enclosed in a sealed envelope with postage thereon fully prepaid in the firm's outgoing mail. I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. It is deposited with United States Postal Service on that same day in the ordinary course of business.
- ☒ BY CALIFORNIA OVERNIGHT - by placing ☒ a true and correct copy ☐ the original thereof enclosed in a sealed envelope for delivery via California Overnight next day delivery to the addressee noted above.
- ☐ BY HAND DELIVERY - by delivering by hand and leaving a true copy with the person and at the address shown above.
- ☐ BY FACSIMILE TRANSMISSION - by causing a true facsimile thereof to be electronically transmitted to the parties, by using their facsimile number indicated on the attached service list.
- ☐ STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- ☒ FEDERAL: I declare that I am employed in the office of a member of the bar of this court at whose direction service was made.

Executed on April 3, 2008, at Fresno, California.

  
\_\_\_\_\_  
Lisa R. Barr

**Service List**

**Via Mail and Electronic Mail:**

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E-Mail: bsingal@dbslawfirm.com

Attorneys for Defendants

**Via California Overnight:**

**Chambers Copies**

Hon. Hon. Vaughn R. Walker  
U.S. District Court, Northern District  
450 Golden Gate Avenue  
17<sup>th</sup> Floor, Court Room 6  
San Francisco, CA 94102